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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. YUKI A. LAVALLEY, Defendant and Appellant.	D042285 (Super. Ct. No. SCD168492)

APPEAL from a judgment of the Superior Court of San Diego County, William D. Mudd, Gerald C. Jessop and Christine V. Pate, Judges. Affirmed.

Yuki A. LaValley appeals a judgment of conviction arising from her plea of guilty to one count of transporting a controlled substance (ecstasy), with a special allegation that the substance was not for personal use within the meaning of Penal Code[1] section 1210, subdivision (a). She contends the superior court erred in denying her motions to suppress evidence taken in violation of her Fourth Amendment rights (U.S. Const., Fourth

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1 All further statutory references are to the Penal Code unless otherwise specified.

Amend.) after stopping her car for lack of license plates. She contends the court was required to suppress the evidence because (1) the stop was based on an objectively unreasonable belief that she had violated the Vehicle Code, (2) the police did not have a reasonable suspicion to justify their prolonged detention of her after the stop and (3) the police lacked probable cause to arrest her. She also contends the court erred by imposing a probation condition requiring her to register as a narcotics offender pursuant to Health and Safety Code section 11590. We affirm the judgment but strike the registration requirement.

BACKGROUND

At approximately 3:15 p.m. on July 2, 2002, San Diego Police Officers Steven Hobbs and Jonathon Jenkins observed an automobile, a black Geo Tracker, being driven on University Avenue. Previously the officers were informed by a federal drug enforcement agent that the female driver of the car might have been involved in a narcotics violation. The federal agent requested the officers follow the car and stop it if a legitimate basis to do so existed.

When the police observed appellant's car, they noted it had no front or rear license plates. Officer Hobbs knew that a lack of license plates is not a violation of the law if the car is newly brought into California but not yet registered; however, he needed to determine that fact. He was aware a vehicle brought into California from out of state must be registered within 10 days.

The officers activated their lights and stopped the vehicle. Officer Hobbs approached from the driver's side and asked the driver, appellant, for her driver's license.

Appellant handed the officer a California driver's license. She also produced a Nevada certificate of title for the car dated June 20, 2002. Officer Hobbs had not seen a Nevada certificate of title form and was not familiar with the document appellant handed to him. He asked for proof of registration in addition to the Nevada title document. Appellant did not at that time point out that there was a sticker in the windshield.

When appellant passed Officer Hobbs her license, her hand was shaking "almost uncontrollably." She was a little nervous, which Officer Hobbs considered common at most traffic stops, but he found it unusual that she was having trouble keeping her eyes open. She kept squinting even though she was wearing sunglasses. Officer Hobbs was able to see appellant's eyes through the semi-tinted shades. When he noticed her eyes were having trouble staying open, he asked her to remove her glasses and noticed that when she closed her eyes, she had uncontrollable flutter in both eyes. Her pupils were very dilated. Officer Hobbs asked appellant to stick her tongue out and noticed it was very chalky and dry in appearance. Based on his observations and training, Officer Hobbs believed appellant was under the influence of a controlled substance, possibly methamphetamine, and asked her to step out of the vehicle.

Officer Jenkins then conducted an evaluation. He noticed appellant's pupils were "blown," meaning they were bigger than one would normally see. Her speech was very rapid. Her pulse, which would normally be about 60 to 90, was about 132. Her lips were chapped and dry. He administered an "internal clock" test and observed her overall appearance. He concluded appellant exhibited symptoms of being under the influence of methamphetamine.

As a result of the officers' observations, appellant was arrested for being under the influence of a controlled substance. The detention of appellant from the time the traffic stop was initiated at approximately 3:15 p.m. to appellant's arrest at approximately 3:25 p.m. was about 10 minutes.

Officer Hobbs recalled appellant telling him there was a sticker in the front windshield when she was outside the car.

Following appellant's arrest, her car was impounded. During the impound search Officer Hobbs found four large baggies of what he believed to be methamphetamine and two baggies containing 99 pills in appellant's purse. He suspected the pills were ecstasy. Upon testing, the baggies were found to contain 249.81 grams of methamphetamine, which at a normal usage of .05 grams would amount to about 5,000 doses. This plus the four separate containers indicated possession for sale. The pills were determined to be 99 ecstasy pills. The normal dose of ecstasy is one-half to one full pill. Officer Hobbs opined the pills were possessed for sale.

Because of appellant's arrest on criminal drug charges and the impounding of the vehicle, Officer Hobbs conducted no further check on the vehicle registration; however, eventually officers ran her driver's license and the vehicle identification number.

The district attorney filed an information charging appellant with two counts of transporting a controlled substance (ecstasy and methamphetamine, respectively) and one count each of possession of a controlled substance for sale, selling or furnishing methamphetamine for sale and being under the influence of a controlled substance. The

information also alleged that the transported substances were not for personal use within the meaning of section 1210, subdivision (a).

Appellant thereafter filed a motion under section 1538.5 to suppress the evidence the officers acquired during the stop, including their observations, their field evaluations, her statements to them and the seized substances. She argued that the officers' search and seizure of such evidence violated her Fourth Amendment rights. At the September 30, 2002, preliminary hearing, the court denied the suppression motion. On March 11, 2003, the court considered appellant's renewed motion to suppress. The court read the transcript of the initial motion, considered additional points and authorities and heard additional argument. No new evidence was introduced. The court denied the renewed motion.

Appellant pleaded guilty to the count of transporting methamphetamine, with the special allegation that the methamphetamine was not for her personal use, and the prosecutor dismissed the remaining charges against her. The court sentenced LaValley to three years' probation, with the condition that she register as a narcotics offender pursuant to Health and Safety Code section 11590. A timely appeal was filed.

ANALYSIS

1. *The traffic stop was lawful and was not premised on any mistake of law.*

Appellant argues the trial court erred in denying her motion to suppress because Officers Hobbs and Jenkins mistakenly believed the lack of license plates on her car was a violation of the Vehicle Code.

In reviewing a ruling on a motion to suppress evidence, we defer to the trial court's findings of fact, whether express or implied, if those findings are supported by substantial

evidence. We independently determine the relevant legal principles and apply those principles in evaluating the reasonableness of the police conduct. (*People v. Memro* (1995) 11 Cal.4th 786, 846; *People v. Mays* (1998) 67 Cal.App.4th 969, 972.)

California law requires that if two license plates are issued for a vehicle, one must be attached to the front and one must be attached to the rear of the vehicle. (Veh. Code, § 5200.) Appellant does not urge otherwise. Nor does appellant cite any authority standing for the proposition that officers cannot stop a vehicle that has no license plates where the law of the state demands both plates be displayed. It follows that in a state like California, which requires license plates on the front and back of a vehicle, it is not a legal mistake for officers to stop a car that does not have plates on the front and rear of the vehicle. Any argument that the officers could not stop the vehicle to inquire as to proper registration necessarily fails. (*See People v. Castellon* (1999) 76 Cal.App.4th 1369, 1374; *People v. Lee* (1968) 260 Cal.App.2d 836, 838-839.)

Officer Hobbs made no mistake of law. He stopped appellant because appellant's vehicle did not have license plates attached at the front or rear, i.e., it appeared to be out of compliance with California law. He expressly testified he was aware a car with no plates attached might still be properly registered but he needed to stop the vehicle and inquire as to whether any of the conditions allowing for that legality existed. When asked directly whether he knew that "not having license plates is not a violation if the car is newly brought into the state and not yet registered," he responded: "Well, you can assume that, but I still have to determine that fact before I get to that point." As the court expressly found at the time of the first motion to suppress, and again at the second motion

to suppress, the proper registration could not be ascertained until the officers stopped the car, spoke with appellant and inspected the sticker on the front windshield.

Appellant's conclusion Officer Hobbs made a mistake of law is premised on the argument that ultimately the officer found the vehicle was legally registered and that he did not check further on the registration once she was arrested. Appellant confuses the temporal nature of mistakes of law. Whether a mistake of law is *the basis* for a stop must by definition be determined by what law the officers understood when they stopped the car, not what they discovered afterward. By virtue of appellant's argument, what officers discovered after a stop would determine the legality of the decision to stop. This premise is logically flawed and is contrary to well-settled law that a detention is never justified by what is found. (See *People v. Brown* (1995) 45 Cal.2d 640, 643.)

Moreover, appellant confuses a mistake of law with potential mistakes of fact. Her argument would convert an officer's investigation and clarification of *facts* he is observing into an argument the officer engaged in a mistake of law. Thus, an officer who in order to determine if a driver is intoxicated stops a car because it is weaving in a traffic lane, learns the driver is not intoxicated, but in the process of talking with the driver views contraband in clear view would by appellant's logic require the contraband be suppressed because of the officer's "mistake" in concluding the driver might be intoxicated. This is not the law. A traffic stop is at its inception lawful if it is based on a reasonable suspicion a traffic violation has occurred. (*People v. Glick* (1988) 203 Cal.App.3d 796, 801-802; see also *People v. Miranda* (1993) 17 Cal.App.4th 917, 926; *United States v. Whren* (1996) 517 U.S. 806, 810.) The possibility of an innocent

explanation for behavior does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct and resolve that suspicion. The principle function of the officer's duty is to resolve through investigation the ambiguity presented. (*People v. Leyba* (1981) 29 Cal.3d 591, 599.)

Appellant's numerous citations to cases where a "mistake of law" occurred are unavailing in this case. We agree that where an officer bases a vehicle stop on an error law, the detention is improper. In each case cited, however, the officers were, *at the time of the traffic stop*, in error about the law of their jurisdiction and the auto detentions were premised on those mistakes of law. Here, Officer Hobbs stopped appellant's vehicle because it had no license plates. The officer knew the law: absent specified conditions, vehicles must have a license plate on the front and rear. He stopped appellant's vehicle because it did not have a license on either the front or back, and while driving he could not determine if any specified conditions allowing the lack of plates, existed.

The trial court correctly concluded the detention was proper and did not constitute a mistake of law. Its ruling was correct.[2]

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[2] Appellant states at several places that the detention was objectively unreasonable because it was "fabricated." No separate briefing or additional authority is cited supporting this statement as anything other than an extension of the argument that the officers made a mistake of law. Thus appellant has not properly raised on appeal the question of whether it was somehow improper for the drug enforcement officers to request Officer Hobbs observe and if justifiable detain appellant's car.

2. *The length of the detention was permissible and probable cause existed to arrest appellant.*

Appellant argues, as she did below, that the officers here should have simply and immediately verified the Nevada registration and permitted her to leave.

As appellant notes, the scope of an investigative detention must be carefully tailored to its underlying justification. (*Florida v. Royer* (1983) 460 U.S. 491, 500.) When an officer stops a motorist for a traffic violation, the officer may temporarily detain the driver for a period of time necessary to complete the duties incurred because of the traffic stop. (*People v. McGaughran* (1979) 25 Cal.3d 577, 584.) However, if during the stop the officer discovers facts giving rise to a reasonable suspicion that the motorist is involved in criminal activity unrelated to the traffic stop, the detention can be prolonged in order to allow the officer to investigate the newly suspected activity. (*Id*. at pp. 587-590.)

As the trial courts recognized, the analytical problem for appellant is that in order to discern whether any basis of legal registration existed, the officers needed to talk to appellant, and almost immediately it was clear she was exhibiting physical symptoms of being under the influence. Regardless of the registration, the officers were justified in assuring themselves appellant was capable of driving safely. They determined she was not.

Appellant's reliance on *Williams v. Superior Court* (1985) 168 Cal.App.3d 349 and *United States v. McSwain* (10th Cir. 1994) 29 F.3d 558 is misplaced. In *Williams* the motorist was stopped for a minor traffic violation. The officer improperly began

questioning the driver and the passenger about previously reported felonies unrelated to the stop and for which no evidence appeared during the stop. In *McSwain* the officers stopped a vehicle to assure it was properly registered and after they discovered it was properly registered, they examined an expired driver's license and additional vehicle registration. They sought and were given permission to search the vehicle and discovered contraband. The court held the purpose of the stop was satisfied once the proper registration was determined and any additional detention exceeded the scope of the underlying justification for the stop. (*Id*. at pp. 561-562.) Thus in these cases the officers stopping the motorists improperly engaged in discussion and/or investigation of crimes unrelated to the stop and unobserved during the stop, or once having fulfilled the purpose of the stop, then investigated unrelated offenses. These are not the facts presented in this case.

This case is also dissimilar to *United States v. Wood* (10th Cir. 1997) 106 F.3d 942. In *Wood* the defendant was stopped for speeding and the officers noticed he was nervous, breathed rapidly and cleared his throat. Based on these factors, the presence of maps and candy wrappers in the car, and the driver's unemployment and criminal narcotics record, the officers, over the driver's refusal, searched the car for narcotics. As appellant notes, the court cautioned that a driver's nervousness must be viewed with caution as a factor in determining if probable cause to believe a driver is harboring contraband in a vehicle. (*Id*. at p. 948.)

Appellant urges that like the defendant in *Wood*, appellant exhibited nervousness and "other innocent factors." The record does not support this interpretation of the facts.

Here Officer Hobbs noticed appellant was "a little nervous" but this observation does not appear to have formed a basis that she was in violation of any other law because the officer considered it "common in most traffic stops." Moreover, the factors the officers were concerned with included an uncontrollably shaking hand and not being able to keep her eyes open, both critical to whether appellant was under the influence and could drive safely. Thus, unlike the situation in *Wood*, the officers here were immediately focused on appellant's physical condition and, reasonably, the safety of the driver and others on the road. Indeed, it would have been a dereliction of duty to permit appellant to simply drive away.

Appellant's citation to additional cases urging officers use caution in factoring nervousness into their detention and investigation of motorists is, for the reasons noted above, of no value in this case.

Appellant's related argument is that no probable cause existed to arrest her. The facts however would lead a reasonable officer of ordinary care and prudence to believe and conscientiously entertain an honest and strong suspicion she was committing an offense, i.e., she was driving while under the influence of a narcotic. (*See People v. Mims* (1992) 9 Cal.App.4th 1244, 1247.) Her inability to keep her eyes open, uncontrolled eye flutter and almost uncontrollable shaking hand alerted the officers further inquiry was needed and the observation of her significantly elevated pulse and the chalky appearance of her tongue provided a further basis for their reasonable suspicion.

Appellant contends Officers Hobbs and Jenkins were not capable of determining whether she was under the influence. To the extent appellant is arguing the officers were

not qualified to offer an opinion on her intoxication, this argument goes to the foundation of their expertise. We note appellant did not raise this foundational issue below and it is waived. (*People v. Smith* (1967) 253 Cal.App.2d 299, 304-305.)

To the extent appellant contends the officers lacked sufficient experience, this argument goes to the weight of their testimony. The trial court was entitled to make that determination. (*People v. Needham* (2000) 79 Cal.App.4th 260, 265.) Its determination is supported by substantial evidence. At the time of the preliminary hearing, Officer Hobbs had been a police officer for 12 and 1/2 years. He had 40 hours of formal training in the sale, recognition and use of narcotics. He had been part of special units involved in narcotics enforcement. He had worked undercover and observed people under the influence. At the time of the offense, Officer Jenkins had served as a police officer for approximately four years. During this time he had been trained for approximately 32 hours in the symptoms of controlled substance use. This training included standard formal and nonformal training at the police academy and in recognition training throughout his career and a class on rave drugs, which include ecstasy.

The time period between appellant's car being pulled over and the time she was asked to remove her glasses was less than a minute and a half. The entire detention, from the stopping of appellant's vehicle to her arrest took 10 minutes. We conclude the detention was not impermissibly prolonged and probable cause existed to arrest appellant.

3. *The probation requirement appellant register as a narcotics offender must be stricken.*

Appellant argues that the sentencing court exceeded its authority when it required as a condition of probation that she register as a narcotics offender. She asks that the condition be stricken. The People agree, as do we. The registration requirement does not apply to appellant because her conviction of Health and Safety Code section 11379 was based upon her transporting a controlled substance. (Health & Saf. Code, § 11590, subd. (a).)

DISPOSITION

The judgment is affirmed. The probation requirement appellant register as a narcotics offender pursuant to Health and Safety Code section 11590 is stricken.

BENKE, Acting P.J.

I CONCUR:

HALLER, J.

McIntyre, J., Dissenting.

The legality of a traffic stop is governed by federal constitutional law. (See *In re Lance W.* (1985) 37 Cal.3d 873, 884-890.) Such a stop is justified at its inception if it is based on at least a reasonable suspicion that the driver has violated the Vehicle Code or some other law. (*People v. Brown* (1998) 62 Cal.App.4th 493, 496; *U.S. v. Lopez-Soto* (9th Cir. 2000) 205 F.3d 1101, 1106.) "Reasonable suspicion" is defined as "a particularized and objective basis" for suspecting the person stopped of criminal activity. (*People v. White* (2003) 107 Cal.App.4th 636, 641.) It requires specific, articulable facts that, together with objective and reasonable inferences, form the basis for a suspicion of criminal conduct. (*Ibid*.) The trial courts' findings of reasonable suspicion are subject to de novo review. (*U.S. v. Twilley* (9th Cir. 2000) 222 F.3d 1092, 1095.)

Where there is a basis for finding a reasonable suspicion of criminal activity, an officer's stop of a vehicle is deemed to be justified and reasonable, regardless of whether the officer was in fact making the stop for a reason that would not constitutionally have supported it. (*Whren v. United States* (1996) 517 U.S. 806, 810, 813.) Thus, an officer may conduct a pretextual traffic stop as a means to uncover other criminal activity (see *U.S. v. Dhinsa* (2nd Cir. 1999) 171 F.3d 721, 724-725, and cases cited therein), so long as there is some objective basis to believe that the stopped individual has violated or is violating the law. (*U.S. v. Twilley, supra*, 222 F.3d at p. 1096.)

Published state and federal appellate authority widely, although not universally, holds that an officer's belief that a driver is violating the law will not provide the

necessary justification for a traffic stop where that belief is based on a misunderstanding of the applicable law. (See *People v. White, supra,* 107 Cal.App.4th at pp. 643-644; *U.S. v. Chanthasouxat* (11th Cir. 2003) 342 F.3d 1271, 1277-1280; *U.S. v. Twilley, supra,* 222 F.3d 1092!(9th Cir.)!; *U.S. v. King* (9th Cir. 2001) 244 F.3d 736, 738; *U.S. v. Lopez-Valdez* (5th Cir. 1999) 178 F.3d 282, 288; see also *People v. Teresinski* (1982) 30 Cal.3d 822, 831-832; *People v. Lopez* (1987) 197 Cal.App.3d 93, 101; contra *People v. Glick* (1988) 203 Cal.App.3d 796, 799; *People v. Smith* (1984) 151 Cal.App.3d 89, 98; *People v. Lee* (1968) 260 Cal.App.2d 836, 839.) "A suspicion based on . . . a mistaken view of the law cannot be the reasonable suspicion required for the Fourth Amendment, because 'the legal justification [for a traffic stop] must be objectively grounded.'" (*U.S. v. Twilley, supra*, 222 F.3d at p. 1096, quoting *U.S. v. Lopez-Soto*, *supra*, 205 F.3d at p. 1105.) In accordance with these cases, a stop based on a mistake as to the law is lacking constitutional justification even if the officer acted reasonably and his erroneous interpretation of the law was reasonable. (*U.S. v. Lopez-Soto, supra*, 205 F.3d at p. 1106 ["there is no good-faith exception to the exclusionary rule for police who do not act in accordance with governing law"]; *U.S. v. King, supra*, 244 F.3d at p. 741.)

Thus, for example, in *People v. White, supra*, 107 Cal.App.4th at pages 643-644, the California Court of Appeal held that a traffic stop based on the officer's mistaken belief that having only one license plate on the car violated California's Vehicle Code was not justified and thus violated the defendant's Fourth Amendment rights. The Ninth Circuit Court of Appeals reached a similar conclusion in *U.S. v. Twilley, supra*, 222 F.3d at page 1096, which held that the officer's erroneous belief that two license plates are

required invalidated the stop even if the belief was objectively reasonable. (See also *U.S. v. Lopez-Soto, supra*, 205 F.3d at pp. 1105-1106 [officer's mistaken belief that the law required a registration sticker to be on the rear of the vehicle invalidated the stop despite the fact that the officer was so instructed on the law at the police academy].)

Here, Officer Hobbs testified that he stopped the Tracker because he noticed that it did not have any license plates, an apparent violation of the law. (See Veh. Code, § 5200.) LaValley argues, however, that Officer Hobbs was mistaken in his belief that she had violated the law because she had recently purchased the car in Nevada and had a temporary Nevada registration sticker properly displayed on her front windshield as required and that, on that basis, he lacked reasonable suspicion to stop her. I agree with LaValley's argument, which the Attorney General does not contest.

Pursuant to the analysis of the foregoing authorities, I conclude that Officer Hobbs's apparent mistaken belief that LaValley had violated the Vehicle Code did not constitute reasonable suspicion to stop the Tracker and that his conduct in stopping LaValley was unreasonable and thus violated LaValley's Fourth Amendment rights. In reaching this conclusion, I disagree with the majority's assertion that the issue of whether the stop was based on a mistake of law is to be determined by the officers' observations or understanding of the facts leading up to the stop and without regard to the actual facts subsequently discovered. In accordance with this conclusion, I would hold that the evidence seized as a result of the detention could not properly be admitted against LaValley and thus the superior court erred in denying her suppression motions. Because I

would reverse the judgment on this basis, I would not reach the other issues LaValley raises in her appeal.

McINTYRE, J.